California Council for Environmental and Economic Balance
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October 16, 2017

Mr. Victor Douglas
Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105
Submitted electronically via vdouglas@baaqmd.gov

RE: Proposed Regulation 11, Rule 18 (Rule 11-18): October 5, 2017 Draft Rule

Dear Mr. Douglas,

On behalf of the members of the California Council for Environmental and Economic Balance (CCEEB), we submit the following comments on the proposed draft Regulation 11, Rule 18. CCEEB represents many facilities and businesses that operate within the Bay Area Air Quality Management District and would be subject to Rule 11-18. We have been an active stakeholder throughout the rule development process, and are committed to ensuring that Rule 11-18 brings about public health benefits to the communities of the Bay Area. Many of the following comments reiterate points made in previous letters to the District, as well as discussions with District staff.

Our primary recommendations are:

- **Define TBARCT so that it is consistent with the Health & Safety Code.** Proposed draft Rule 11-18 defines TBARCT similarly to Best Available Control Technology (BACT) rather than Best Available Retrofit Control Technology (BARCT). CCEEB disagrees with the proposed definition as it ignores standard tests of cost effectiveness inherent to all BARCT programs in the state. We encourage staff to redefine TBARCT so that it is consistent with the Health & Safety Code, as well as the District's own definition of BARCT in its Regulation 2, Rule 2.

- **Add a dispute resolution process**. A process to resolve disputes is needed in Rule 11-18 to allow facilities to appeal staff-developed emissions inventories, health risk assessments, and risk reduction plan determinations that they believe to be inaccurate or, in the case of risk reduction plans, infeasible. CCEEB believes the District's Hearing Board can be used to arbitrate potential disagreements

and recommends that the District amend its Hearing Board Rules, if necessary, to allow for this authority over Rule 11-18 appeals.

- **Correct what appears to be a drafting error in Subsection 11-18-404.6**. The October 14, 2016 version contained similar language related to the Risk Reduction Plan Requirements. We believe the October 5, 2017 version contains a small but important drafting error by changing an "or" to an "and." CCEEB asks staff to correct this error and revert back to the prior draft rule language, or explain why this change made.

- **Revise Subsection 11-18-406**. As currently written, Rule 11-8 gives the Air Pollution Control Officer (APCO) wide discretion to force changes to an already approved risk reduction plan, even in cases where a facility can demonstrate compliance. This creates regulatory double jeopardy and makes investment planning uncertain, as facilities cannot reasonably foresee when and if the APCO authority would be triggered. It is also not clear how such an action would impact implementation deadlines.

What follows is a more detailed discussion of each of these points.

Define TBARCT so that it is consistent with the Health & Safety Code

CCEEB urges the District to align its definition of Best Available Retrofit Control Technology for Toxics (TBARCT) with the California Health and Safety Code Section 40920.6, which defines BARCT for criteria pollutants. Under state law, districts must assess the "cost-effectiveness" and "incremental cost-effectiveness" of potential control options prior to rule adoption. As currently written, Rule 11-18 bypasses these critical rulemaking steps, and is inconsistent with the District's own BARCT definition in Regulation 2, Rule 2 (Rule 2-2).

At a minimum, CCEEB recommends the following changes, which are based on the BARCT definition in Rule 2-2: *[added language is in red, strikeouts in ~~blue~~]*

11-18-204 Best Available Retrofit Control Technology for Toxics, or TBARCT: For any existing source of toxic air contaminants, except cargo carriers, the most stringent of the following retrofit emission controls, taking into account environmental, energy and economic impacts, provided that under no circumstances shall the controls be less stringent than the emission control required by any applicable provision of federal, State or District laws, rules, regulations or requirements:

204.1 The most effective retrofit emission control device or technique that has been successfully utilized for the type of equipment comprising such a source; or

204.2 The most stringent emission limitation achieved by a retrofit emission control device or technique for the type of equipment comprising such a source; or

204.3 Any retrofit control device or technique ~~or any emission limitation~~ that the APCO has determined to be technologically feasible for the type of equipment comprising such a source~~, while taking into consideration the cost of achieving health risk reductions, any non-air quality health and environmental impacts, and energy requirements~~; or

204.4 The most stringent retrofit emission control for a source type or category specified as MACT by U.S. EPA, or specified in an ATCM by CARB.

Add a dispute resolution process

As we have previously commented, proposed Rule 11-18 lacks any dispute resolution process. CCEEB believes this is a critical flaw in the draft rule, and asks the District to revise the draft rule to allow for appeals to its Hearing Board should disputes arise concerning any of the following: (1) District-calculated emissions inventories, (2) District-conducted HRAs or District actions to disapprove a facility-conducted HRA, and (3) District actions to disapprove or modify a facility's risk reduction plan. Adding a dispute resolution mechanism would be consistent with rules and processes at other air districts implementing AB 2588.

CCEEB recommends the following subsections be added Rule 11-18:

11-18-403.1 The owner/operator may appeal the decision of the APCO to the Hearing Board under Article 3 of the Hearing Board Rules should the owner/operator dispute the results of the finalized HRA. If the Hearing Board denies the appeal, the APCO-approve HRA shall be considered final.

11-18-405.3.4 The owner/operator may appeal the disapproval of a plan to the Hearing Board under Article 3 of the Hearing Board Rules. If the Hearing Board denies the appeal, plans shall be revised and resubmitted within 90 days after the decision. The revised plan shall correct all deficiencies identified by the Air Pollution Control Officer.

11-18-406.1 The owner/operator may appeal the decision of the APCO to require an update to an already-approved risk reduction plan to the Hearing Board under Article 3 of the Hearing Board Rules. If the Hearing Board denies the appeal, plans shall be updated and resubmitted within 180 days after the decision.

Should it be necessary in order to implement these changes, we ask the District to amend its Hearing Board Rules accordingly. At a minimum, we ask staff to brief the Board about this matter and to provide legal counsel about the impact, if any, of expanding the Hearing Board's authority to consider Rule 11-18 disputes.

We incorporate by reference our discussion on this matter in our letters to District staff, dated June 30, 2017 and December 2, 2016.

Correct Subsection 11-18-404.6.3 or Explain Change from the October 14, 2016 Version
We ask that the following amendment be made to the language below. Subsection 11-18-403.6 of October 14, 2016 version of the draft rule read:
[emphasis added]

11-18-403.6 An estimate of residual health risk following implementation of the risk reduction measure(s) specified in the Plan. If the health risk cannot be reduced to below the risk action level within three years, the Plan shall also include the following:

6.1 A demonstration that all sources of risk at the facility are either controlled with TBARCT if they are significant sources, *or* do not pose a health risk in excess of the significant risk threshold, or

6.2 A demonstration of technical infeasibility or unreasonable economic burden associated with reducing the facility health risk below the risk action level or controlling all significant sources with TBARCT within three years and

6.3 Identification of activities to identify or develop additional risk reduction measures to enable the operator to comply by the specified date.

The October 5, 2017 version of the draft rule seems to have mistakenly revised the "or" to an "and," as shown below:

11-18-404.6.3 The facility will comply through application of TBARCT and can show that:

3.1 The health risk from the facility cannot be reduced to a level below the risk action level because it is not feasible, *and*

3.2 TBARCT has been installed on all significant sources of risk, or will be 11-18-6 installed no later than five years after Plan approval plus such time, not to exceed five additional years, as is necessary to address a technical feasibility issue or to avoid placing an unreasonable economic burden on the facility operator.

CCEEB asks staff to correct this subsection and revert back to language from the October 14, 2016 draft, as amended above. If this change was intentional, then we ask staff to discuss and explain why this change was made.

Revise Section 11-18-406 to Remove Double Jeopardy

This section grants the APCO broad authority to require changes to risk reduction plan, without any justification other than, "information becomes available…regarding…emissions reduction technologies that may be used by a facility that would significantly impact health risks to exposed persons…" CCEEB believes this is overly board and creates significant regulatory risk for facilities that are in full compliance and already working to successfully reduce risks below action levels or to install TBARCT on all significant sources. It also makes investments in control strategies highly uncertain and unstable, as the District can literally change the rules at any time. Additionally, neither the rule nor the staff report explains how or why this authority would be triggered, and how it would impact implementation deadlines.

As such, CCEEB strongly recommends the following revision:

11-18-406 Updated Risk Reduction Plan: If information becomes available after the initial APCO approval of a Plan regarding health risks posed by a facility ~~or emissions reduction technologies that may be used by a facility~~ that would significantly impact health risks to exposed persons or the feasibility of a Plan, the APCO may require or, upon request by a facility owner/operator and approval by the APCO, allow the facility owner/operator to update the Plan to reflect the information and resubmit the Plan to the APCO for approval pursuant to Section 11-18-403.

Thank you for the opportunity to submit these comments. Please feel free to contact me at billq@cceeb.org and 415-512-7890 ext. 115, or my colleague Janet Whittick at janetw@cceeb.org and ext. 111.

Sincerely,

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CCEEB Chief Operating Officer and Bay Area Partnership Project Manager

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